

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

FILED

JUL 18 2006

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY \_\_\_\_\_ DEPUTY CLERK

ROARK & HARDEE L.P. d/b/a §  
THE WAREHOUSE SALOON AND §  
BILLIARDS, BILL HARDEE, 219 L.P. d/b/a §  
219 WEST, PAUL SILVER, DEI GRATIA, §  
INC. d/b/a THE ELYSIUM, JOHN §  
WICKHAM, PUB DRAUGHT, INC. d/b/a §  
LOVEJOYS TAP ROOM AND BREWERY, §  
JOSEPH (CHIP) TAIT, BEERLAND, §  
RANDALL STOCKTON, TENNIA B. §  
BROWN d/b/a HORSESHOE LOUNGE, GMC §  
INVESTMENT, INC. d/b/a EGO'S, CANARY §  
ROOST, INC., CANARY HUT, INC., GAIL §  
E. JOHNSON, SHEENA SEMMLER, §  
JANET BUDMAN, KEEP AUSTIN FREE §  
PAC, TONY SIRGO, and EDWARD CHECK, §  
§  
v. §  
§  
CITY OF AUSTIN §

CASE NO. A-05-CA-837 SS

**CITY OF AUSTIN'S LIST OF TRIAL WITNESSES AND EXPERT WITNESSES**

TO THE HONORABLE SAM SPARKS, UNITED STATES DISTRICT JUDGE:

COMES NOW, Defendant City of Austin and files this listing of Witnesses and Expert

Witnesses.

**I. Trial Witnesses**

1. Lynn E. Carter  
P.O. Box 1546  
Austin, Texas 78767-1546  
(512) 974-2310 / (512) 974-6490 [fax]  
Defendant's attorney. May testify in regard to whether attorneys' fees and costs are reasonable and necessary.
2. Edward Check  
c/o Marc A. Levin, Potts & Reilly, L.L.P.  
401 West 15<sup>th</sup> Street, Suite 850  
Austin, Texas 78701  
(512) 469-7474 / (512) 469-7480 [fax]

May testify by deposition testimony.

3. Heath Douglas, Employee of Warehouse Saloon & Billiards  
509 E. Ben White Blvd.  
Austin, Texas 78704  
(512)422-1121  
May testify by deposition testimony in this cause (April 4, 2006).
4. Marcel Elizondo, Sanitarian  
Health and Human Services, Water and Air Pollution Protection Unit  
Austin, Texas  
(512) 972-5702  
May be called to testify in regard to complaint investigations, inspections of establishments in regard to the smoking ordinance, communications with owners, operators and/or employees of establishments, and enforcement of the ordinance. Also may be called to testify regarding communications with Plaintiffs or witnesses.
5. Carolyn Espeseth, Municipal Court Prosecutor  
c/o Lynn E. Carter  
P.O. Box 1546  
Austin, Texas 78767-1546  
(512) 974-2310 / (512) 974-6490 [fax]  
May be called to testify regarding criminal prosecutions of violations of the smoking ordinance.
6. John Gabrielson, # 5342  
Austin Police Officer, Austin Police Department  
715 East 8<sup>th</sup> Street  
Austin, Texas 78701  
512-974-5000  
May be called to testify as to his knowledge of persons smoking in bars and his issuance of citations for such smoking.
7. Daniel Ray Gonzalez, Sanitarian Senior  
Health and Human Services, Water and Air Pollution Protection Unit  
Austin, Texas  
(512) 972-5684  
May be called to testify in regard to complaint investigations, inspections of establishments in regard to the smoking ordinance, communications with owners, operators and/or employees of establishments, and enforcement of the ordinance. Also may be called to testify regarding communications with Plaintiffs or witnesses.
8. Brandlin Hamilton, Bartender  
Mickey's Thirsty I Lounge  
11806 N. Lamar Blvd.  
Austin, Texas 78753

(512) 836-9991

May be called to testify concerning loss of income due to smoking ban, compliance efforts, and enforcement issues regarding warning and citations issued.

9. Bill Hardee, Owner/Operator  
The Warehouse Saloon and Billiards  
c/o Marc A. Levin, Potts & Reilly, L.L.P.  
401 West 15<sup>th</sup> Street, Suite 850  
Austin, Texas 78701  
(512) 469-7474 / (512) 469-7480 [fax]  
Plaintiff. May be called to testify by deposition testimony.
10. Jeffrey Herring, Smoking Investigator  
Environmental and Consumer Health Unit  
City of Austin Health and Human Services Department  
2808 Webberville Road, Room 161  
Austin, Texas 78702  
(512) 972-6281 and/or (512) 972-5400  
Will testify in regard to complaint investigations, inspections of establishments in regard to the smoking ordinance, communications with owners, operators and/or employees of establishments, and enforcement of the ordinance. May also testify in regard to the numbers of complaints, violations, and criminal complaints that have been recorded by the City of Austin Health and Human Services Department. (HHSD). Also may testify regarding communications with Plaintiffs or witnesses.
11. Philip Huang, M.D., M.P.H., Medical Director, Chronic Disease Prevention  
Chief, Bureau of Chronic Disease and Tobacco Prevention  
Texas Department of State Health Services  
1100 W. 49<sup>th</sup> Street  
Austin, Texas 78756  
(512) 458-7200  
May be called briefly if necessary. See testimony from Preliminary Injunction hearing dated 10/11/05; see expert designation. Dr. Huang has personal knowledge and expertise in regard to air quality testing performed in Austin bars before and after the effective date of the smoking ordinance. Additional testimony may be offered in regard to harmful effects of second-hand smoke, plaintiffs' claims of financial harm and/or air quality tests of bars in Austin. See recent report of U.S. Surgeon General.
12. Ryan Hunter  
May be called as a rebuttal witness.
13. Robert "Bob" Jerome, Day Manager of Warehouse Saloon & Billiards  
509 E. Ben White Blvd.  
Austin, Texas 78704  
(512) 422-1121  
May be called to testify by deposition testimony in this cause (April 4, 2006).

14. Shannon Jones, III, Assistant Director Public Health  
City of Austin Health and Human Services Department  
15 Waller  
Austin, Texas 78702  
(512) 972-5400  
May be called to testify as to the effects of second-hand smoke; educational programs and practices in regard to the harmful effects of second-hand smoke; enforcement guidelines, policies, and procedures; the department's interpretation of the smoking ordinance; and compliance with the ordinance by the vast majority of Austin bars. May also testify in regard to the numbers of complaints, violations, and criminal complaints that have been recorded by the City of Austin Health and Human Services Department. (HHSD).
15. Gail Johnson, Owner/Operator  
Ego's, The Canary Hut, The Canary Roost  
c/o Marc A. Levin  
Potts & Reilly, L.L.P.  
401 West 15<sup>th</sup> Street, Suite 850  
Austin, Texas 78701  
(512) 469-7474 / (512) 469-7480 [fax]  
Plaintiff. May be called to testify by deposition testimony.
16. Glenn C. Larimore, Sanitarian  
Health and Human Services, Water and Air Pollution Protection Unit  
Austin, Texas  
(512) 972-5649  
May be called to testify in regard to complaint investigations, inspections of establishments in regard to the smoking ordinance, communications with owners, operators and/or employees of establishments, and enforcement of the ordinance. Also may testify regarding communications with Plaintiffs or witnesses.
17. Mickey Leathers, Owner/Operator  
Mickey's Thirsty I Lounge  
11806 N. Lamar Blvd.  
Austin, Texas 78753  
(512) 836-9991  
May be called to testify concerning loss of income due to smoking ban, compliance efforts, and enforcement issues regarding warning and citations issued.
18. T.C. Leshikar, Owner/Operator - Tambaleo  
302 Bowie  
Austin, Texas 78703  
(512) 472-3213  
Will submit testimony during Preliminary Injunction Hearing on 10/11/05.

19. Marc A. Levin, Potts & Reilly, L.L.P.  
401 West 15<sup>th</sup> Street, Suite 850  
Austin, Texas 78701  
(512) 469-7474 / (512) 469-7480 [fax]  
Plaintiffs' attorney. May cross-examine in regard to attorney fees and regarding his involvement in criminal prosecutions related to the smoking ordinance.
20. David Lopez, Manager  
Environmental and Consumer Health Unit  
City of Austin Health and Human Services Department  
15 Waller  
Austin, Texas 78702  
(512) 972-5400  
May be called to testify as to the effects of second-hand smoke; educational programs and practices in regard to the harmful effects of second-hand smoke; enforcement guidelines, policies, and procedures and; the department's interpretation of the smoking ordinance; and compliance with the ordinance by the vast majority of Austin bars. May also be called to testify in regard to the numbers of complaints, violations, and criminal complaints that have been recorded by the City of Austin Health and Human Services Department. (HHSD).
21. David Lurie, Director of Public Health  
City of Austin Health and Human Services Department  
601 Airport Boulevard  
Austin, Texas 78702  
(512) 972-5400  
May introduce testimony from Preliminary Injunction hearing on 10/12/05. May be called testify as to the effects of second-hand smoke; educational programs and practices in regard to the harmful effects of second-hand smoke; enforcement guidelines, policies, and procedures and; the department's interpretation of the smoking ordinance; and compliance with the ordinance by the vast majority of Austin bars. May also be called to testify in regard to the numbers of complaints, violations, and criminal complaints that have been recorded by the City of Austin Health and Human Services Department. (HHSD).
22. Laura Nunez  
1905 Anita Dr., #3  
Austin, Texas 78704  
(512) 791-5653  
May introduce Preliminary Injunction Hearing testimony on 10/11/05.
23. Sarah Martin, Bartender  
Rackdaddy's  
4410 E. Riverside Drive  
Austin, Texas 78741  
(512) 389-1577

May be called to testify regarding loss of income due to smoking ordinance, compliance efforts, and enforcement issues.

24. Karina Moore, Public Health Educator II  
Environmental and Consumer Health Unit  
City of Austin Health and Human Services Department  
2808 Webberville Road, Room 161  
Austin, Texas 78702  
(512) 972-5653  
May introduce testimony from Preliminary Injunction Hearing. May be called to testify as to the effects of second-hand smoke; educational programs and practices in regard to the harmful effects of second-hand smoke; enforcement guidelines, policies, and procedures and; the department's interpretation of the smoking ordinance; and compliance with the ordinance by the vast majority of Austin bars. May also be called to testify as to his inspections of bars for compliance with the smoking ordinance. May also be called to testify in regard to communications with bar owners, operators and employees regarding the smoking ordinance.
25. Homer Moyers, Employee of the Canary Roost  
11900 Metric Blvd.  
Austin, Texas 78758  
May introduce deposition testimony in this cause (April 10, 2006).
26. Carol Sahm, Compliance Coordinator  
Environmental and Consumer Health Unit  
15 Waller Street  
Austin, Texas 78702  
(512) 972-5600  
May be called to testify as to violations of the smoking ordinance.
27. Quint Sebek, # 3454  
Austin Police Officer, Austin Police Department  
715 East 8<sup>th</sup> Street  
Austin, Texas 78701  
512-974-5000  
May be called to testify as to his knowledge of persons smoking in bars and his issuance of citations for such smoking.
28. Paul Silver, Owner/Operator  
219 West  
c/o Marc A. Levin, Potts & Reilly, L.L.P.  
401 West 15<sup>th</sup> Street, Suite 850  
Austin, Texas 78701  
(512) 469-7474 /(512) 469-7480 [fax]  
Former Plaintiff. May be called to testify by deposition testimony.

29. Tony Sirgo  
c/o Marc A. Levin, Potts & Reilly, L.L.P.  
401 West 15<sup>th</sup> Street, Suite 850  
Austin, Texas 78701  
(512) 469-7474 / (512) 469-7480 [fax]  
Plaintiff. See deposition testimony.
30. Joseph "Chip" Tait, Former Owner/Operator - Lovejoys  
c/o Marc A. Levin, Potts & Reilly, L.L.P.  
401 West 15<sup>th</sup> Street, Suite 850  
Austin, Texas 78701  
(512) 469-7474 / (512) 469-7480 [fax]  
Plaintiff. May be called to testify by deposition testimony.
31. Azita Vaiszadeti, Employee of the Canary Roost  
11900 Metric Blvd.  
Austin, Texas 78758  
May be called to testify by deposition testimony in this cause (April 10, 2006).
32. Robert Wright, Supervisor  
Environmental and Consumer Health Unit  
City of Austin Health and Human Services Department  
2808 Webberville Road, Room 161  
Austin, Texas 78702  
(512) 972-5654  
May be called to testify as to the effects of second-hand smoke; educational programs and practices in regard to the harmful effects of second-hand smoke; enforcement guidelines, policies, and procedures and; the department's interpretation of the smoking ordinance; and compliance with the ordinance by the vast majority of Austin bars. May also be called to testify in regard to communications with bar owners, operators and employees regarding the smoking ordinance.

Defendant City of Austin also incorporates and designates all witnesses identified by Plaintiffs.



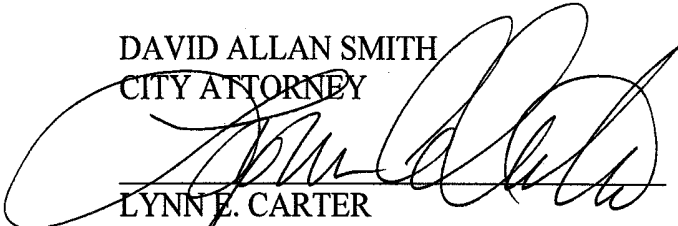
**II. Expert Witnesses**

1. Philip Huang, M.D., M.P.H.  
Medical Director, Chronic Disease Prevention  
Chief, Bureau of Chronic Disease and Tobacco Prevention  
Texas Department of State Health Services  
1100 W. 49<sup>th</sup> Street  
Austin, Texas 78756  
512/458-7200  
May call briefly if necessary. See testimony from Preliminary Injunction hearing dated 10/11/05; see expert designation. Dr. Huang has personal knowledge and expertise in regard to air quality testing performed in Austin bars before and after the effective date of the smoking ordinance. Additional testimony may be offered in regard to harmful effects of second-hand smoke, plaintiffs' claims of financial harm and/or air quality tests of bars in Austin. See recent report of U.S. Surgeon General.
2. Lynn E. Carter  
P.O. Box 1546  
Austin, Texas 78767-1546  
(512) 974-2310  
(512) 974-6490 [fax]  
Defendant's attorney. May testify in regard to whether attorneys' fees and costs are reasonable and necessary.

Defendant incorporates by reference all witnesses listed by Plaintiffs.

RESPECTFULLY SUBMITTED,

DAVID ALLAN SMITH  
CITY ATTORNEY



LYNNE E. CARTER  
Assistant City Attorney  
State Bar No. 03925990  
City of Austin Law Department  
Post Office Box 1546  
Austin, Texas 78767-1546  
(512) 974-2310  
(512) 974-6490 (facsimile)  
ATTORNEYS FOR DEFENDANT



**CERTIFICATE OF SERVICE**

This is to certify that I have served a copy of the foregoing on all parties, or their attorneys of record, in compliance with the Federal Rules of Civil Procedure, this 18<sup>th</sup> day of July, 2006.

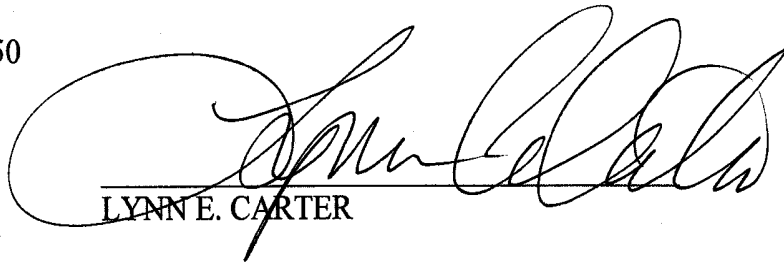
**(Via Facsimile (512) 469-7480)**

Marc A. Levin

Potts & Reilly, L.L.P.

401 West 15<sup>th</sup> Street, Suite 850

Austin, Texas 78701



LYNNE E. CARTER

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